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Attorneys for Defendant
BUMBO (PTY) LTD.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DYLAN LAMM, a minor by and through
his guardian ad litem MARY CATHERINE
DOHERTY; and KEVIN LAMM,
Plaintiffs,

vs.

BUMBO, BUMBO LIMITED, BUMBO
(PTY) LTD.; TARGET CORPORATION;
and DOES 1 to 20,

Defendants.

Case No. C-07-04807 MHP

**DEFENDANT BUMBO (PTY)
LTD.'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Complaint filed: November 2, 2007

Defendant Bumbo (PTY) LTD. (hereinafter "Bumbo" or "defendant"), by and through its attorneys of record, Condon and Forsyth LLP, hereby answers plaintiffs' Complaint for Damages as follows:

PARTIES TO THE ACTION

1. Bumbo denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 and 2 of the complaint and, on this basis, denies the allegations.

2. Answering paragraph 3 of the complaint, Bumbo admits that Bumbo is a

1 corporation organized an existing under the laws of South Africa and is domiciled in South
2 Africa, and that its products are sometimes distributed in the State of California.

3 3. Bumbo denies knowledge or information sufficient to form a belief as to the truth
4 of the allegations contained in paragraphs 4, 5, and 6 of the complaint and, on this basis, denies
5 the allegations.

6 7 JURISDICTION AND VENUE

8 4. Bumbo denies knowledge or information with respect to whether the plaintiffs
9 became injured within Sonoma County and whether the product was sold within Sonoma County
10 and, on that basis denies the allegations contained in paragraph 7 of the complaint. Bumbo
11 otherwise denies the allegations contained in paragraph 7 of the complaint.

12 5. Bumbo denies the allegations contained in paragraph 8 of the complaint.

13 14 GENERAL ALLEGATIONS

15 6. Bumbo admits that it manufacturers a product called the "Bumbo Baby Sitter"
16 which is intended as a product to be used by children ages 3 months to 14 months pursuant to the
17 warnings and instructions and under close parental supervision. Bumbo otherwise denies the
18 allegations contained in paragraph 9 of the complaint including a description of the product
19 which, as alleged in the complaint, is incomplete.

20 7. Defendant Bumbo denies the allegations contained in paragraph 10 of the
21 complaint except admits that it is a party to an agreement with defendant Target Corporation
22 ("Target") through which Bumbo distributes the Bumbo Baby Sitter for retail sales through some
23 of Target's retail stores in California and in the other areas of the United States.

24 8. Bumbo denies knowledge or information sufficient to form a belief as to the truth
25 of the allegations contained in paragraphs 11 and 12 of the complaint and, on this basis, denies
26 the allegations.

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1 AS TO THE FIRST CAUSE OF ACTION

2 FOR STRICT PRODUCT LIABILITY

3 9. Responding to paragraph 13 of the complaint, defendant Bumbo repeats each and
4 every admission, allegation, and denial of paragraphs 1 through 8 of this answer as if herein set
5 forth in full.

6 10. Bumbo denies the allegations contained in paragraphs 14, 15, 16, 17, 18, and 19
7 of the complaint.

8
9 AS TO THE SECOND CAUSE OF ACTION

10 FOR NEGLIGENCE

11 11. Responding to paragraph 20, defendant Bumbo repeats each and every admission,
12 allegation, and denial of paragraphs 1 through 10 of this answer as if herein set forth in full.

13 12. Bumbo denies knowledge or information sufficient to form a belief as to the truth
14 of the allegations contained in paragraph 21 of the complaint and, on this basis, denies the
15 allegations.

16 13. Bumbo denies the allegations contained in paragraph 22 of the complaint except
17 Bumbo admits that it had an obligation to use due care with respect to those activities for which
18 it was engaged in connection with the design, production, and sale of the Bumbo Baby Sitter.

19 14. Bumbo denies the allegations contained in paragraphs 23, 24, 25, and 26 of the
20 complaint.

21 AS TO THE THIRD CAUSE OF ACTION

22 FOR WRONGFUL INFLICTION OF

23 EMOTIONAL DISTRESS

24 15. Responding to paragraph 27 of the complaint, defendant Bumbo repeats each and
25 every admission, allegation, and denial of paragraphs 1 through 14 of this answer as if herein set
26 forth in full.

27 16. Bumbo denies knowledge or information sufficient to form a belief as to the truth
28

1 of the allegations contained in paragraph 28 of the complaint and, on this basis, denies the
2 allegations.

3 17. Bumbo denies the allegations contained in paragraphs 29, 30, and 31 of the
4 complaint.

5
6 AS TO THE FOURTH CAUSE OF ACTION

7 INJUNCTIVE RELIEF UNDER BUSINESS

8 AND PROFESSIONS CODE § 17200

9 18. Responding to paragraph 32 of the complaint, defendant Bumbo repeats each and
10 every admission, allegation, and denial of paragraphs 1 through 17 of this answer as if herein set
11 forth in full.

12 19. Bumbo admits the allegations contained in paragraph 33 of the complaint.

13 20. Paragraphs 34, 35, and 36 of the complaint constitute attempts to summarize legal
14 principles and procedures without any factual context. California law is established and exists
15 by statute and case precedent. Bumbo admits the substance of California law and procedures as
16 established by statute in case precedent, but otherwise denies the allegations and these
17 paragraphs.

18 21. Bumbo denies the allegations contained in paragraphs 37, 38, 39, 40, 41, and 42
19 of the complaint.

20
21 FIRST AFFIRMATIVE DEFENSE

22 TO EACH AND EVERY CAUSE OF ACTION

23 22. The complaint fails to state facts sufficient to state a cause of action against
24 Bumbo upon which relief may be granted.

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SECOND AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION

23. Plaintiffs' damages, if any, are due to the acts or omissions of persons or entities other than Bumbo; however, in the event a finding is made that liability exists on the part of Bumbo, Bumbo is entitled to indemnity and/or contribution from such persons or entities in direct proportion to their respective fault.

THIRD AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION

24. The incident alleged in the complaint, and injuries and/or damages plaintiffs allege they sustained, were caused by an intervening and superseding cause, not caused by Bumbo.

FOURTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION

25. The incident alleged in the complaint, and the injuries and/or damages plaintiffs allege they sustained, were caused by the negligent and careless supervision of the activity of the minor plaintiff by the guardian *ad litem* and/or parents of the minor plaintiff.

FIFTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION

26. The incident alleged in the complaint, and any injuries and damages alleged, were the result of the misuse of the product in a manner which was not intended by Bumbo in that, *inter alia*, the product was used on a raised surface and, upon information and belief, with a child who was unattended, contrary to the express warnings issued with the product.

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SIXTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

27. The plaintiffs' claims for injunctive relief is barred by the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

28. The plaintiffs' claims are pre-empted by federal statutes and regulations including but not limited to, the Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, and the regulatory and administrative authority of the Consumer Product Safety Commission.

EIGHTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

29. This court should decline to exercise jurisdiction over this case including, without limitation, the claim for injunctive relief, on the grounds that the determination of the safety of this product and its fitness for sale to the general public is within the special expertise of the Consumer Product Safety Commission and the exercise of the courts' jurisdiction will disrupt the proper relationships between the courts and the decisions of the Consumer Product Safety Commission under the doctrine of primary jurisdiction.

NINTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

30. All of plaintiffs' causes of action are barred by the equitable doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

31. The Bumbo Baby Sitter was manufactured to the state-of-the-art and was

1 manufactured to all applicable industry standards.

2 ELEVENTH AFFIRMATIVE DEFENSE

3 TO EACH AND EVERY CAUSE OF ACTION

4 32. Plaintiffs' damages are barred because plaintiffs knowingly, voluntarily and freely
5 assumed the risk of all activities alleged in plaintiffs' complaint, and plaintiffs are legally and
6 proximately responsible for risks their minor child is intentionally, knowingly or negligently
7 exposed to.

8
9 TWELFTH AFFIRMATIVE DEFENSE

10 TO EACH AND EVERY CAUSE OF ACTION

11 33. Plaintiffs were implicitly and expressly required to notify Bumbo of any defects
12 in the product within a reasonable period of time, and plaintiffs failed to notify Bumbo so as to
13 give Bumbo an opportunity to make an inspection and effectuate the repairs, if any were
14 necessary, and said plaintiffs have waived their right to have said repairs made and/or estopped
15 to assert a claim for damages based on the failure to make repairs when Bumbo never had an
16 opportunity to do so.

17
18 THIRTEENTH AFFIRMATIVE DEFENSE

19 TO EACH AND EVERY CAUSE OF ACTION

20 34. Plaintiffs engaged in an unforeseeable abuse, misuse and/or alteration of the
21 Bumbo Baby Sitter after it left the manufacturer's hands, and this unforeseeable abuse, misuse
22 and/or alteration was the proximate cause of any injuries sustained by plaintiffs.

23
24 FOURTEENTH AFFIRMATIVE DEFENSE

25 TO EACH AND EVERY CAUSE OF ACTION

26 35. The challenged design of the Bumbo Baby Sitter outweighs any risk of danger or
27 injury alleged to be inherent in the design.

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FIFTEENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

36. Bumbo is exempt from liability because Bumbo provided several clear, conspicuous warnings on the product and its packaging, which in common understanding would and should call a reasonable person's attention to read, and Bumbo had an expectation that purchasers and consumer would read the warnings prior to use and prior to allowing use by their minor child and follow instructions and avoid misuse or abuse of the product.

SIXTEENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

37. The clear, conspicuous warnings provided by Bumbo on the product and its packaging, constitute valid and binding exclusions, modifications and disclaimers of any express or implied warranties pursuant to California Commercial Code § 2316.

SEVENTEENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

38. Bumbo and the Bumbo Baby Sitter comply with all relevant federal and state statutory and administrative standards and regulations.

EIGHTEENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

39. Plaintiffs' prayer for equitable relief including but not limited to plaintiffs' prayer for injunction, is moot since the Consumer Product Safety Commission has already determined the Bumbo Baby Sitter need not be removed from the market and additional warnings have been provided on the product and its packaging pursuant to the voluntary Consumer Product Safety Commission recall.

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NINETEENTH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

40. The product did not possess any design defect, manufacturing defect or failure to warn defect at the time it left the hands of Bumbo.

TWENTIETH AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

41. Plaintiffs have failed to satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) since plaintiffs allege a unified course of fraudulent conduct but fail to sufficiently allege the time, place and other details of such fraudulent conduct.

TWENTY-FIRST AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

42. Plaintiffs' causes of action and claim for equitable relief including but not limited to injunction are barred in light of the fact that plaintiffs have an adequate remedy at law.

TWENTY-SECOND AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

43. Plaintiffs' causes of action and claim for equitable relief, including but not limited to claim for injunction, are barred because the equities balance against an injunction or any other form of equitable relief.

TWENTY-THIRD AFFIRMATIVE DEFENSE

TO EACH AND EVERY CAUSE OF ACTION

44. Bumbo does not presently know all of the facts and circumstances surrounding plaintiffs' claims. Bumbo therefore reserves the right to amend or supplement this Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

1 WHEREFORE Bumbo prays that plaintiffs take nothing by way of this action and that
2 Bumbo be awarded costs and all other relief the Court deems just an proper.

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4 Dated: September 11, 2008

CONDON & FORSYTH LLP

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6 By: _____

7 FRANK A. SILANE
8 JENNIFER J. JOHNSTON
9 CHRISTOPHER B. QUEALLY
10 Attorneys for Defendant
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